

## STATE BOARD TO REVIEW CLAIMS

MEETING OF AUGUST 27, 1998

Reno, Nevada

ITEM: IV.

SUBJECT: Public hearing for the consideration of amendment to Chapter 590 of the Nevada Administrative Code (NAC) relating to the State Petroleum Fund.

DISCUSSION: At various 1997 State Petroleum Fund board meetings and workshops, discussion was held regarding the need for owner/operators to provide adequate notice in event that a third party liability claim may be made against the fund. This Resolution includes amended language to NAC 590 to provide a regulatory requirement for such notice.

The proposed regulation amends NAC 590.700 to 590.790 by requiring an owner or operator of a petroleum storage tank enrolled in the Petroleum Fund, to promptly notify the Nevada Division of Environmental Protection in the event that a third party liability claim may be made against the fund. Additionally, it is proposed that failure of an owner or operator to provide such notice, may become cause for denial of a third party liability reimbursement from the fund. It is further proposed that third party liability claims will only be authorized for reimbursement upon receipt of a court order or upon the Board's approval of a negotiated settlement.

Written notice of the proposed regulatory language, including the schedule for three public workshops to discuss the proposed regulation, was mailed to all registered owners participating in the Petroleum Fund, Certified Environmental Managers and interested parties. Public notice for the proposed regulation was also provided via announcement in newspapers and posting at multiple locations. No written comments were received by NDEP and few verbal comments were voiced during the public workshops. The limited comments focused on whether a fee increase would result due to the proposal or if such a regulation was needed since there have been no past fund problems involving third party liability. No comments in direct opposition to the proposed regulation have been received.

RECOMMENDATION: **Adoption** of Resolution No. 99-01 as proposed.

## STATE BOARD TO REVIEW CLAIMS

### RESOLUTION NO. 99-01

#### Resolution to Amend NAC Chapter 590 Adopting Required Notice for Third Party Damages

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Whereas, the State Board to Review Claims (hereinafter referred to as the Board) Finds:

1. NRS 590.880 provides \$250,000 coverage for damages to a person other than this state or the operator for home heating oil tanks of 1,100 gallons or less.
2. NRS 590.890 provides \$100,000 for damages to any person other than this state or the operator of the tank for storage tanks other than home heating oil.
3. NAC 590.710 defines "damages" to mean any money the operator of a storage tank becomes legally obligated to pay as damages because of bodily injury or property damage to any person other than the state or the operator caused by a discharge.
4. It is in the best interest of the Petroleum Fund to be advised of any pending third party liability claims which may be brought against the fund and to have legal counsel present at any negotiated settlement for such claims.
5. Attachment "A", which is made a part of this Resolution, contains proposed amended language to NAC 590.
6. Public notices of this proposed amendment were distributed pursuant to the requirements specified by NRS 233B.0603. Notices were also published on July 27, 1998 in the *Elko Daily Free Press*, *The Las Vegas Review Journal*, and in *The Reno Gazette Journal*. A copy of the Public notice is included in Attachment "B" of this Resolution.
7. Public workshops to review the proposed amendment and solicit public comments were held in Elko on August 13, 1998; in Carson City on August 18, 1998; and in Las Vegas on August 20, 1998. A copy of the Public Workshop notice is provided in Attachment "C" of this Resolution.

THEREFORE BE IT RESOLVED:

That the Board adopt the proposed amendment to NAC 590 as contained in Attachment "A" of this Resolution.

I, John Haycock, Chairman, do hereby certify that the foregoing is a full, true, and correct copy of a Resolution adopted by the Nevada State Board to Review Claims on August 27, 1998.

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John Haycock, Chairman  
State Board to Review Claims

## Attachments

## ATTACHMENT "A"

### STATE BOARD TO REVIEW CLAIMS PROPOSED TEMPORARY REGULATION

August 27, 1998

AUTHORITY: NRS 590.830

**Section 1.** NAC Chapter 590.700 to 590.790 is hereby amended by adding the following:

Any owner or operator against whom a third-party liability claim is made shall give written notice of the claim to the division no later than thirty days after service of summons that the claim has been filed in court or after receipt of notification of the claim. Payment of third-party claims from the fund may be denied for any owner or operator who fails to give the division notice as required herein, unless the owner or operator demonstrates good cause for the failure to comply with the deadline. Reimbursements will only be authorized upon receipt of a final court order of judgment or upon the Board's approval of a negotiated settlement. Authorization of reimbursement for any third party claim will be made to the extent warranted by the facts of the case.

## **ATTACHMENT "B"**

### **NOTICE OF PUBLIC HEARING AND INTENT TO ACT UPON TEMPORARY REGULATION Nevada State Board to Review Claims (Petroleum Fund)**

The Nevada State Board to Review Claims (Petroleum Fund) will hold a public hearing beginning at **10:00 a.m. on Thursday, August 27, 1998, at the Regional Transportation Commission Board Room, 2050 Villanova Drive, Reno, Nevada.**

The purpose of this hearing is to receive comments from all interested persons regarding adoption of a proposed temporary regulation to Nevada Administrative Code, **NAC 590**. If no person directly affected by the proposed action appears to request time to make an oral presentation, the State Board to Review Claims may proceed immediately to act upon any written submission.

The proposed regulation amends NAC 590.700 to 590.790 by requiring an owner or operator of a petroleum storage tank enrolled in the Petroleum Fund, to promptly notify the Nevada Division of Environmental Protection in the event that a third party liability claim may be made against the fund. It is proposed that failure of an owner or operator to provide such notice, may become cause for denial of a third party liability reimbursement from the fund. It is further proposed that third party liability claims will only be authorized for reimbursement upon receipt of a court order or upon the Board's approval of a negotiated settlement.

The proposed regulation is estimated to have no immediate economic effect on business. No changes are proposed in either the fees paid to support the fund or in the total amount of coverage provided by the fund. While there have been few third party liability suits brought against petroleum storage tank owners in Nevada; the potential exists that the Petroleum Fund could be negatively impacted if several such liability claims were made. The proposed regulation may yield a long-term economic benefit to enrolled tank owners from any cost savings achieved by the notice requirement.

The proposed regulation has no anticipated adverse effect on the public, either immediate or long-term. The public may see long-term benefits associated with prevention of any large, unexpected reductions in the Petroleum Fund. The proposed regulation affects the practice of the state fund, thus there is no commensurate federal law or regulation. The proposed regulation does not overlap or duplicate any known regulations of another state or local governmental agency. There is no additional cost to the agency for enforcement and the regulation does not add a new fee, nor increase an existing fee.

Persons wishing to comment upon the proposed regulation may appear at the scheduled public hearing to submit oral testimony and evidence. Those wishing to testify for more than five minutes should submit their request in writing by August 20, 1998, to the Board to Review Claims, c/o Sheri Gregory, NDEP, 333 West Nye Lane, Room 138, Carson City, Nevada, 89706-0851.

Comments, data, views, or arguments may also be submitted in written form to the Board to Review Claims, c/o Mike Leigh, NDEP, 333 West Nye Lane, Room 138, Carson City, Nevada, 89706-0851. Written submissions must be received at least five days before the scheduled public hearing.

A copy of this notice and the proposed regulation amendment will be on file for inspection by members of the public during business hours at the Department of Museums, Library and Arts, 100 Stewart Street, Carson City, Nevada; and the Division of Environmental Protection at 123 West Nye Lane, Room 206, Carson City, Nevada and at 555 East Washington Street, Suite 4300, Las Vegas, Nevada. In addition, copies of the notice and regulation will be available for inspection at the main public library in all counties in which an office of the agency is not maintained. Copies of this notice and the proposed regulation will also be mailed to members of the public upon request.

Pursuant to NRS 233B.0603 © the provisions of NRS 233B.064 (2) is hereby provided:

"Upon adoption of any regulation, the agency, if requested to do so by an interested person, either before adoption or within 30 days thereafter, shall issue a concise statement of the principal reasons for and against its adoption, and incorporate therein its reason for overruling the consideration urged against its adoption".

**Members of the public who are disabled and require special accommodations or assistance at the meeting are requested to notify, in writing, the Board to Review Claims, c/o Sheri Gregory, 333 West Nye Lane, Room 138, Carson City, Nevada, 89706-0851, facsimile (702) 687-6396, or by calling (702) 687-4670, extension 3047, no later than August 20, 1998.**

This public notice has been posted at the Regional Transportation Commission in Reno, the Department of Museums, Library and Arts in Carson City, the Clark County Commission Chambers in Las Vegas, the Washoe County Commission Chambers in Reno, and at the offices of the Department of Conservation and Natural Resources in Carson City and Las Vegas.

**ATTACHMENT "C"**

**NOTICE OF PUBLIC WORKSHOPS**  
**NEVADA DIVISION OF ENVIRONMENTAL PROTECTION**

**Proposed Regulatory Modifications to the  
Nevada Petroleum Fund**

The Nevada Division of Environmental Protection (NDEP) is sponsoring public workshops, pursuant to NRS 233B, to discuss proposed amendments to the Nevada Administrative Code, sections 590.700 through 590.790. Additional Petroleum Fund topics will be discussed at the workshops, including recent modifications to the application for coverage and invoice itemization forms, presentation of a new tracking system for proof of payment, and anticipated activities related to the December, 1998, deadline for upgrade requirements of underground storage tanks. Three workshops have been scheduled as follows:

**Thursday, August 13, 1998**

**Elko, Nevada**

2:00 pm - 5:00 pm

Elko Convention Center

Silver Room

700 Moren Way

**Tuesday, August 18, 1998**

**Carson City, Nevada**

9:00 am - 12 noon

USGS Conference Room (No. 223)

333 W. Nye Lane

**Thursday, August 20, 1998**

**Las Vegas, Nevada**

10:00 am - 2:00 pm

Grant Sawyer State Building

Gaming Control Board Meeting Room (No. 2450)

555 E. Washington Ave.

The purpose of the workshops is to discuss draft regulatory modifications that will enable the State Board to Review Claims and the NDEP to obtain authority to request prompt notification of third party claims. Additionally, NDEP staff will discuss claim procedure modifications and present revised forms to be used for applications, claims, and proof of payment.

The workshops are intended to provide a forum for the NDEP to review the proposed modifications with the public and enable interested parties to ask questions and provide comment. NDEP will accept written comments on the proposed regulation through August 25, 1998. A public hearing before the State Board to Review Claims is scheduled for August 27, 1998.

For further information on the draft regulatory modifications or workshops, please contact Mike Leigh, Petroleum Claims Branch, Bureau of Corrective Actions, Nevada Division of Environmental Protection, at 702-687-4670, ext. 3037.